

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT  
SAN ANTONIO DIVISION**

MI FAMILIA VOTA, TEXAS STATE  
CONFERENCE OF THE NATIONAL  
ASSOCIATION FOR THE ADVANCEMENT  
OF COLORED PEOPLE, MICAELA  
RODRIGUEZ and GUADALUPE TORRES,

Plaintiffs,

v.

GREG ABBOTT, Governor of Texas; RUTH  
HUGHS, Texas Secretary of State,

Defendants.

Case No. 5:20-cv-00830

**PLAINTIFFS' EMERGENCY  
MOTION FOR TEMPORARY  
RESTRAINING ORDER AND/OR  
PRELIMINARY INJUNCTION  
AND BRIEFING SCHEDULE**

**PLAINTIFFS' EMERGENCY MOTION FOR TEMPORARY RESTRAINING  
ORDER AND PRELIMINARY INJUNCTION AND TO SET BRIEFING SCHEDULE**

Plaintiffs respectfully move for a temporary restraining order and preliminary injunction immediately excising the mask mandate exemption from Governor Abbott's Executive Order and concomitant relief from Defendant Hughes pursuant to section 2 of the Voting Rights Act. Defendants oppose the motion and the proposed briefing schedule.

Last Wednesday, the Fifth Circuit remanded to this Court to resolve a limited question:

Were the district court to conclude that the exemption from wearing a mask in public places contained in Executive Order GA-29 for poll workers, voters, and others in polling places violated section 2 of the Voting Rights Act, the district court might excise that provision if it concluded that this would redress the injuries the Plaintiffs have alleged. It is at least conceivable that such a remedy would not materially or substantially affect the ongoing election, but that would be a matter for the district court to determine.

Further indicating the urgency of this issue, last Friday the Circuit issued the mandate to permit this Court to immediately resolve Plaintiffs' objection to the mask exemption just ninety minutes after Defendants filed their opposition.

This matter is urgent. Early voting is already underway with masks not required at polling places. Election day is but two weeks away. Plaintiffs now ask this Court to order the following relief immediately pending the determination of Plaintiffs' motion for a preliminary injunction and, after such determination, preliminary enjoining Defendants as follows:

- Defendant Abbott is hereby ordered to excise the following exemption from wearing a mask in public places contained in Executive Order GA-29: "8. any person who is voting, assisting a voter, serving as a poll watcher, or actively administering an election."
- Defendant Hughs is hereby ordered to make all revisions to Election Advisory No. 2020-19 necessary and appropriate to comply with the as-excised version of the Executive Order, including excising the following statement: "There is no authority under Texas law to require voters to wear face coverings when presenting to vote"; and excising any other provisions in Advisory No. 2020-19 that suggest face coverings are not mandatory at polling locations.

To succeed on a motion for a preliminary injunction, Plaintiffs must show "(1) a substantial likelihood of success on the merits, (2) a substantial threat that plaintiffs will suffer irreparable injury if the injunction is not granted, (3) that the threatened injury outweighs any damage that the injunction might cause the defendant, and (4) that the injunction will not disserve the public interest." *Planned Parenthood v. Sanchez*, 403 F.3d 324, 329 (5th Cir. 2005).

In support of this motion, Plaintiffs expect to show (1) they are likely to succeed in demonstrating that the exemption for voters, poll workers, and poll watchers in Executive Order GA 29's statewide mask mandate disproportionately burdens the rights of Black and Latino voters in violation of section 2 of the Voting Rights Act; (2) that the Voting Rights Act violation

will cause irreparable harm to the Plaintiffs; and (3) that an injunction will serve the public interest and no harm will result from a preliminary injunction because the State has already determined that requiring masks protects Texans' health and safety and requiring masks at polling places presents no burden on the right to vote. Further, Plaintiffs will show that the requested relief would not materially affect the ongoing election.

In light of the fact that early voting is already underway and Election Day is just 2 weeks from now, time is of the essence. As such, Plaintiffs respectfully ask this court for the following briefing schedule on their motion for emergency relief:

- a. Defendants to submit, on ECF, their opposition to Plaintiffs' preliminary injunction motion no later than 48 hours after filing of Plaintiffs' motion;
- b. Plaintiffs to submit, on ECF, their reply, if any, in further support of Plaintiffs' preliminary injunction motion no later than 24 hours after filing of Defendants' opposition; and
- c. A hearing no later than Monday, October 26, 2020, subject to the Court's availability.
- d. Alternately, Plaintiffs would forego submission of a reply brief if the Court were available to hold a hearing promptly after Defendant's opposition is filed.

Dated: October 20, 2020

Respectfully submitted,

/s/ Sean Lyons

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**CERTIFICATE OF CONFERENCE**

I certify that Plaintiffs' counsel conferred with Defendants' counsel by email on October 20, 2020, regarding Plaintiffs' emergency motion for temporary restraining order and preliminary injunction and to set a briefing schedule. Defendants oppose the motion, and the parties were not able to reach an agreement as to a briefing schedule.

/s/ Sean Lyons  
Sean Lyons

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**CERTIFICATE OF SERVICE**

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on October 20, 2020, and that all counsel of record were served by CM/ECF.

/s/ Sean Lyons  
Sean Lyons